

**United States Department of Labor  
Employees' Compensation Appeals Board**

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**J.E., Appellant**

**and**

**DEPARTMENT OF THE NAVY, NAVAL  
FACILITIES ENGINEERING COMMAND,  
Pearl Harbor, HI, Employer**

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**Docket No. 15-283  
Issued: April 23, 2015**

*Appearances:*  
*Appellant, pro se*  
*Office of Solicitor, for the Director*

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

CHRISTOPHER J. GODFREY, Chief Judge  
COLLEEN DUFFY KIKO, Judge  
JAMES A. HAYNES, Alternate Judge

**JURISDICTION**

On November 19, 2014 appellant filed a timely appeal from a July 10, 2014 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act<sup>1</sup> (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

**ISSUE**

The issue is whether appellant has established a hearing loss in the performance of duty.

**FACTUAL HISTORY**

On February 26, 2014 appellant, then a 61-year-old powered support systems mechanic, filed an occupational disease claim (Form CA-2) alleging that he sustained a "permanent

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<sup>1</sup> 5 U.S.C. § 8101 *et seq.*

threshold shift in hearing” on or before May 20, 2009. The employing establishment noted that appellant first reported the condition to his supervisor on October 6, 2009.

In a March 3, 2014 letter, OWCP advised appellant of the additional evidence needed to establish his claim, including corroboration of hazardous noise exposure at work and medical evidence supporting that a ratable hearing loss resulted from that exposure. It afforded appellant 30 days to submit such evidence.

In response, appellant submitted annual employing establishment audiograms dated from 2007 through 2013, obtained through a hearing conservation program. These reports showed a progressive bilateral hearing loss. The June 1, 2007 audiogram report noted that appellant “was told of hearing loss at time of separation from military.” An October 6, 2009 employing establishment report noted that audio testing conducted by the occupational health clinic found a “permanent threshold shift in [appellant’s] hearing.” An April 16, 2013 audiogram showed decibel losses at the frequency levels of 500, 1,000, 2,000, and 3,000 hertz (Hz) in the right ear of 5, 25, 40, and 60, respectively. Testing at the same frequency levels for the left ear revealed decibel losses of 5, 20, 30, and 50, respectively.

Appellant also provided his April 8, 2014 statement describing exposure to hazardous noise from gas turbines and ship engines during military service from 1972 to June 30, 1999. From January 2000 to March 31, 2014, appellant was exposed to noise from gas turbines and diesel engine generators at the employing establishment for two hours a day. He noted wearing earplugs or earmuffs from 1997 onward.

By letters dated April 23, 24, and 29, 2014, OWCP advised appellant of a June 5, 2014 appointment with Howard K. Tamashiro, an audiologist, and a June 23, 2014 second opinion appointment with Dr. Ronald Peroff, a Board-certified otolaryngologist, to assess the nature and extent of his hearing loss. Appellant did not attend either appointment.

By decision dated July 10, 2014, OWCP denied appellant’s claim because he failed to submit probative medical evidence establishing that the accepted occupational noise exposures caused hearing loss.

### **LEGAL PRECEDENT**

An employee seeking benefits under FECA<sup>2</sup> has the burden of establishing the essential elements of his or her claim, including the fact that the individual is an “employee of the United States” within the meaning of FECA; that the claim was filed within the applicable time limitation; that an injury was sustained while in the performance of duty as alleged; and that any disability and/or specific condition for which compensation is claimed are causally related to the employment injury.<sup>3</sup> These are the essential elements of each and every compensation claim regardless of whether the claim is predicated on a traumatic injury or an occupational disease.<sup>4</sup>

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<sup>2</sup> *Id.*

<sup>3</sup> *Joe D. Cameron*, 41 ECAB 153 (1989).

<sup>4</sup> *See Irene St. John*, 50 ECAB 521 (1999); *Michael E. Smith*, 50 ECAB 313 (1999).

An occupational disease is defined as a condition produced by the work environment over a period longer than a single workday or shift.<sup>5</sup> To establish that an injury was sustained in the performance of duty in an occupational disease claim, a claimant must submit the following: (1) medical evidence establishing the presence or existence of the disease or condition for which compensation is claimed; (2) a factual statement identifying employment factors alleged to have caused or contributed to the presence or occurrence of the disease or condition; and (3) medical evidence establishing that the employment factors identified by the claimant were the proximate cause of the condition for which compensation is claimed or, stated differently, medical evidence establishing that the diagnosed condition is causally related to the employment factors identified by the claimant.<sup>6</sup>

### **ANALYSIS**

Appellant claimed that exposure to hazardous noise at work caused a “permanent threshold shift in hearing.” OWCP accepted that, while working as a powered systems mechanic at the employing establishment from January 2000 to March 2014, he was exposed to noise from gas turbines and diesel engine generators for two hours a day.

OWCP’s March 3, 2014 letter advised appellant of the importance of submitting medical evidence from a physician, supporting that hazardous noise at the employing establishment caused or aggravated a medical condition. Appellant provided employing establishment audiograms and occupational health correspondence, but no reports signed or reviewed by a physician. Consequently, OWCP referred appellant to Dr. Peroff, a Board-certified audiologist, and Mr. Tamashiro, an audiologist, to obtain a second opinion on the etiology and extent of the claimed hearing loss. However, appellant did not attend either appointment, nor provide medical evidence from a qualified physician. OWCP denied appellant’s claim by July 10, 2014 decision, finding that he did not establish fact of injury due to a lack of probative medical evidence.

Appellant’s exposure to hazardous noise at work, and his participation in a hearing conservation program, are not in dispute. Although annual employing establishment audiograms show bilateral threshold shifts, there is no opinion of record from a physician diagnosing a hearing loss or relating any medical condition to the accepted noise exposures. As OWCP advised in its March 3, 2014 letter, it was appellant’s burden to provide medical evidence showing that the accepted work factors caused the claimed condition.<sup>7</sup> Appellant also failed to attend second opinion referrals that were scheduled to assess whether appellant had a ratable hearing loss and if it was related to his federal employment. The Board therefore finds that OWCP’s July 10, 2014 decision denying appellant’s claim is proper under the law and facts of this case.

On appeal, appellant asserts that the employing establishment acknowledged that he sustained a “permanent threshold shift in hearing.” He notes his participation in a hearing

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<sup>5</sup> 20 C.F.R. § 10.5(q).

<sup>6</sup> *Solomon Polen*, 51 ECAB 341 (2000).

<sup>7</sup> *Id.*

conservation program with annual audiograms. As stated above, appellant did not submit probative medical evidence diagnosing a hearing loss, or cooperate with OWCP's efforts to obtain such evidence from a second opinion physician.

Appellant may submit new evidence or argument with a written request for reconsideration to OWCP within one year of this merit decision, pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. §§ 10.605 through 10.607.

**CONCLUSION**

The Board finds that appellant has not established a hearing loss in the performance of duty.

**ORDER**

**IT IS HEREBY ORDERED THAT** the decision of the Office of Workers' Compensation Programs dated July 10, 2014 is affirmed.

Issued: April 23, 2015  
Washington, DC

Christopher J. Godfrey, Chief Judge  
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board

James A. Haynes, Alternate Judge  
Employees' Compensation Appeals Board